



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable William J. Lawson  
Secretary of State  
Austin, Texas

Attention: Mr. Frank D. Wear

Dear Sir:

Opinion No. 0-3937  
Re: Do any of the instruments of  
Hellen's National Club consti-  
tute a security within the  
meaning of the Securities Act?

Your letter requesting the opinion of this department  
on the above stated question reads in part as follows:

"It has been called to the attention of this  
Department that one Hellen of Houston, Texas, is  
operating in Houston what is known as a two-ten  
chain under the name of Hellen's National Club.

"The plan operates something like the old  
chain letter racket except that it is operated  
through the sale of memberships in Hellen's Nation-  
al Club rather than through a chain letter. A club  
is formed, for example, in Houston, with ten char-  
ter members. Each charter member sells memberships  
to two other people; each of these two other people  
sell memberships to two more; each of these two  
sell memberships to two more, etc.

"The names are added to the list in the same way  
as in the chain letter racket. Out of each member-  
ship fee of \$1.00, 50¢ goes to the Club or promoter  
and 50¢ goes to the man whose name is on the top of  
the list.

"Under the plan as now in use if the chain is  
unbroken and if each member sells to two more members  
the number one man on the list at the time of the

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tenth progression would receive 50¢ from each of the 1,024 members who would then be on the list, or an amount of \$512.

"In connection with the operation of such plan Hellen's Club uses a preliminary application, copy of which is submitted herewith; ordinary receipt, copy of which is likewise submitted, and sponsor's commission credit voucher, which entitles the man on the top of the list to his 50¢ from each of the members. A copy of this instrument is also enclosed.

"The District Attorney of Harris County has requested an opinion from this Department as to whether any of these instruments constitute a security within the meaning of the Securities Act for the purpose of submitting to the grand jury a complaint against Hellen for selling securities without a license."

The preliminary application blank, ordinary receipt, and sponsor's commission credit voucher used by the Hellen's National Club, photostatic copies of which are attached to your inquiry are as follows:

**"PRELIMINARY APPLICATION**

Houston, Texas

"Gentlemen:

"I herewith make application to be admitted to the Hellen's National Club, and if accepted agree to abide by its by-laws and rules. Please find amount of balance due on membership drive plan.

"Name \_\_\_\_\_  
 "Address \_\_\_\_\_ Residence \_\_\_\_\_  
 "Occupation \_\_\_\_\_ Age \_\_\_\_\_ Phone \_\_\_\_\_  
 "Signed \_\_\_\_\_  
 (Name in full)

D-1-3-M"

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## RECEIPT

"Houston, Texas, July 16, 1941

"Received of EDWARD BUEHNER  
2412 Wentworth Dollars  
\$1.00 - Balance due on Hellen's National Club  
(Membership in Full)  
\$ D 7-44-M-16 HELLEN'S NATIONAL CLUB  
B.M. I-2"

## SPONSOR'S COMMISSION CREDIT VOUCHER

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"Regular		Vacation Cash Bonus Plan
Membership F.	\$5.00:	HELLEN'S NATIONAL CLUB
Registration	1.00:	We Help You When You Need it Most-Now!
Total - -	\$6.00:	Executive Offices: Des Moines, Iowa
Special Mem-	:	Sponsors Commission Credit Voucher for
bership Drive	\$1.00:	Promptness
Be Provident	:	State Headquarters--Houston, Texas
SAVE	SAVE :	

Within three (3) days on sight (This is the 'Sponsors,' (Top  
 Pay To REBA LONG - 511 Main Street/Name) entitled to Cash Com.)  
 Exactly xxx Fifty Cents xxx Exactly - - \$ .50 cents  
 The 'Cash Commission' to be paid personally or bring to Head-  
 quarters, for Credit.

To the Secretary, State  
 Membership Director  
 HELLEN'S ENTERPRISES  
 Des Moines, Iowa

Registered and  
 Sponsored by \_\_\_\_\_

Code \_\_\_\_\_

Address \_\_\_\_\_

"LOOK! This Credit Voucher presented at Membership Drive Head-  
 quarters of Hellen's National Club entitles holder of this credit  
 voucher to make application for membership Drive Fee by paying  
 same, signing application - being sponsored by a member entitles  
 holder to two credit commission vouchers with their name thereon  
 which must be used to secure two new prospective members."

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"The Securities Act" defines the term "security" or "securities" as follows:

"The term 'security' or 'securities' shall include any share, stock, treasury stock, stock certificate under a voting trust agreement, collateral trust certificate, equipment trust certificate, free organization certificate or receipt, subscription or reorganization certificate, note, bond, debenture, mortgage certificate or other evidence of indebtedness, any form of commercial paper, certificate in or under a profit sharing or participation agreement, certificate or any instrument representing any interest in or under an oil, gas or mining lease, fee or title, or any certificate or instrument representing or secured by an interest in any or all of the capital, property, assets, profits or earnings of any company, investment contract, or any other instrument commonly known as a security, whether similar to those herein referred to or not. \* \* \*"

It will be noted that the term "security" or "securities" include a number of instruments or things specifically mentioned therein and any other instrument commonly known as a security whether similar to those referred to or not, in the Act.

As the Securities Act mentions any other instrument commonly known as a security, we direct your attention to some of the general definitions of the word "securities" found in Words and Phrases, Perm. Ed., Vol. 38, p. 469 and the following pages:

"Securities are generally defined as written assurances for the return or repayment of money or evidence of indebtedness."

"Security is an evidence of debt or of property, as a bond, stock certificate or other instrument, etc.; a document giving the holder the right to demand and receive property not in his possession."

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"The term securities in its broadest sense embraces bonds, certificates of stock, and other evidence of debt or of property. (Thayer vs. Wathen, 44 S. W. 906; 17 Tex. 382)

"Generally, any form of instrument used for purpose of financing and promoting enterprises, designed for investment, is a security within statute authorizing investigations by Attorney General of apparent fraud in sale of securities."

"Webster defines security to be something to be given or deposited to make certain the fulfillment of an obligation; the observance of a provision for the payment of a debt. He also says it may mean any evidence of a debt. A contract which secures or clearly ascertains the amount of money due on the performance of a certain work or the furnishing of certain material is a security in law."

"The term security signifies that which makes secure or certain. In its proper use it relates to pecuniary matters, and often consists of a promise or right unattended with possession of the thing upon which it reposes. It implies in its common acceptation that which prevents loss or makes safe. Dr. Johnson defines it as anything given as a pledge or caution. Dean Swift uses it as synonymous with safety or certainty. Webster defines it as anything given or deposited to secure the payment of a debt or the performance of a contract, as a bond for surety, a mortgage, the endorsement of a responsible man or a pledge. It is that which renders a matter sure; an instrument which renders certain the performance of the contract."

The Appellate Courts of this State have rendered several opinions construing certain provisions of "The Securities Act." Some of these cases are, Atwood vs. State, 121 S. W. (2d) 353; Smith vs. Fishback, 123 S. W. (2d) 771; Kadane vs. Clark, 143 S. W. (2d) 197; Culver vs. Cockburn, 127 S. W. (2d) 328; Muse vs. State, 132 S. W. (2d) 596; Aiken vs. State, 128 S. W.

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(2d) 1190; Hults vs. Fowler, 148 S. W. (2d) 249; and Conser vs. Hancock, 149 S. W. (2d) 239. After carefully reading these cases, we do not think that any of them involves the question considered in this opinion.

After carefully considering the term "security" or "securities" as defined by "The Securities Act" we do not think that any of the above mentioned instruments used by Hellen's National Club come within the term "security" or "securities" as that term is defined by "The Securities Act."

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

APPROVED OCT 27, 1941

ATTORNEY GENERAL OF TEXAS

FIRST ASSISTANT  
ATTORNEY GENERAL

By *Ardell Williams*  
Ardell Williams  
Assistant

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